



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Federal Micro Systems, Inc.

File: B-251243

Date: March 18, 1993

Kenneth D. Brody, Esq., Keck, Mahin & Cate, for the
protester.

Iris M. Croft Wood, Esq., Library of Congress, for the
agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Where solicitation provided that agency would score proposals found compliant with requirements, or compliant with minor revision, protester's assertion that act of scoring its proposal was inconsistent with subsequent determination that proposal was unacceptable is without merit since scoring was an integral part of assessment of whether offerors met requirements.

2. Where the protester's proposal contained no evidence that either the firm or any of its personnel had more than limited experience with similar systems, the agency's assignment of a low technical score was reasonable and consistent with the solicitation, which provided for an evaluation of personnel experience and maintenance of similar systems.

DECISION

Federal Micro Systems, Inc. protests the rejection of its proposal under request for proposals (RFP) No. 92-34, issued by the Library of Congress. The protester contends that the agency unreasonably found its proposal to be technically unacceptable.

We deny the protest.

On April 8, 1992, the agency issued the solicitation for a firm, fixed-price requirements contract for 36 months of on-site maintenance services for 1,258 terminals and 140 controllers, manufactured by Comterm, Inc. Comterm, a Canadian company that has since dissolved, produced the terminals with a custom-built chip for the agency in 1983, which allowed operators to use terminals with 3270 protocol for processing bibliographical data displaying diacritics and signs from other languages and alphabets. Such programs are now available commercially, but the agency requires maintenance of the existing equipment until it completes the purchase of new hardware and software, an effort that the agency estimates will take 3 years.

The solicitation provided for award to the offeror whose combination of technical and price proposals represented the best value to the government. Paragraph M.1 of the RFP stated that the agency would evaluate price and technical proposals separately, merging price and technical scores into a combined rating for selection of the optimum proposal for award, representing the best value to the government. The RFP warned that proposals unreasonably low in price would be deemed reflective of a lack of technical competence or failure to comprehend the complexity and risk involved in the contract and could constitute grounds for rejection of the proposal.

Paragraph M.2 stated that the agency would conduct "a weighted (or scored) technical evaluation of all proposals found compliant, or with minor revisions compliant with . . . technical requirements," and that the technical factors would be worth more than price in the evaluation. The evaluation factors, in descending order of importance, were as follows: personnel experience, training, project management and organization structure; local support and spare parts supply logistics; maintenance of similar systems; diagnostics tools and procedures; and corporate experience.

In addition to a price proposal, the agency directed offerors to submit technical proposals in seven sections, including a transmittal letter, executive summary, general management information, and a section addressing mandatory requirements.¹ The section addressing mandatory requirements was to consist of seven subsections as follows: agreement to meet each paragraph of the statement of work, with any needed backup data; project management and support

¹Sections five through seven allowed the offeror to submit various additional information, including a list of any exceptions to the requirements.

personnel staffing, with particular attention to training for maintenance support requirements, and the level of training and experience of each employee; local support, designed to insure 2-hour availability for any needed part; capabilities relating to contracts of a similar nature and magnitude; problem diagnosis procedures; maintenance tools; and a detailed list of spare parts.

The agency received five proposals on May 8, and the contracting officer forwarded them to a technical evaluation committee; on June 3, the committee advised the contracting officer that only one of the five proposals was acceptable as submitted, but that three others, including the protester's proposal, were susceptible of being made acceptable through discussions. The agency met with the offerors and conducted oral and written discussions, prior to receiving best and final offers (BAFO) on July 14.

There was no change in scoring as a result of the negotiations; concerned that offerors may not have comprehended the discussion questions, the agency reopened discussions. The agency reissued discussion questions, scheduled site visits, and extended the offerors an opportunity to submit new BAFOs, which the agency received by September 28. This third review resulted in two offerors receiving scores in the acceptable range; although the protester's score went up by a point, from 33 points out of 75 available points, to 34 points, the evaluators still found the protester technically unacceptable. Finding that of the two acceptable offerors, the incumbent, Printer Systems Corporation (PSC), had submitted the higher scored, lower priced proposal, the agency awarded a contract to PSC on October 28. This protest followed.

The protester challenges the agency's conclusion that its proposal was technically unacceptable. The protester contends that since paragraph M.2 of the solicitation states that only "compliant" proposals would be scored, the agency's act of scoring FMS' proposal indicates that it must have been compliant, i.e., technically acceptable. As support for this contention, the protester notes that the standards for evaluation contained in the evaluation plan make no mention of unacceptability or noncompliance. Rather, the adjectival descriptions for the lowest ratings under the five evaluation factors were as follows: under factor 1, proposal is "vague," personnel have "minimal" experience in 3270 terminal and controller maintenance; under factor 2, approach is "average," with a "minimal"

spare parts inventory and "uncertain" sources of supply; under factors 3 and 4, "minimal" experience with 3270 support and diagnostic tools; under factor 5, "little" management oversight. This language, FMS argues, implies that a scored offeror has some experience, enough to make it acceptable; none of it--"vague," "minimal," etc.--equates to noncompliance or technical unacceptability.

We find no merit to this argument. Whatever the agency had in mind when it used the term "compliant," we see no basis for a conclusion that "compliant" and technically acceptable were meant to be interchangeable terms. Since a range of points beginning at zero could be awarded under each evaluation subfactor, and since, as the protester points out, proposals could be viewed as "vague" and as showing "minimal" experience with "little" management oversight, we think it absolutely clear that only after application of this scoring and evaluation scheme were proposals to be categorized as acceptable or unacceptable. The protester's interpretation would lead to the absurd result that a proposal receiving one point under any evaluation factor would be technically acceptable.²

The key issue here, in any event, is not whether the protester's proposal should have been labeled as technically unacceptable, but whether the actual evaluation of the proposals was reasonable. We conclude that it was.

²To the extent that the protester asserts that if its proposal were found acceptable, it would represent the best value to the government because of its lower price, this position conflicts with the solicitation's emphasis on technical factors. In a negotiated procurement, there is no requirement that award be made on the basis of lowest price; price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed by the tests of rationality and consistency with the established evaluation factors. Central Tex. College, 71 Comp. Gen. 164 (1992), 92-1 CPD ¶ 121. The instant RFP specifically provided for a merger of cost and technical scores for the purpose of selecting the "optimum proposal"; in the combined scoring, technical factors would be worth three times as much as price proposals. While a selection official may reasonably judge that the price of a technically superior proposal is so high that selection of a lower priced, technically inferior proposal is justified, notwithstanding an evaluation scheme placing primary importance on technical considerations, such a selection would deviate from the established criteria and would have to be supported by an extremely strong justification. EPSCO, Inc., B-183816, Nov. 21, 1975, 75-2 CPD ¶ 338. The protester has presented no such justification here.

With respect to the evaluation under factor 1--personnel experience, training, project management and organization structure--the protester asserts that it was unreasonable for the agency to award more points for experience with Comterm 3270 devices; according to the protester, experience with 3270 devices in general should have been sufficient, since the differences between the Comterm devices and other 3270 devices are not significant. Further, the protester contends that even experience with 3270 devices is unnecessary, and that experience with terminals and controllers in general should be sufficient.

Our review of protests against an agency's evaluation of proposals and decision to reject a protester's offer is concerned chiefly with whether the evaluation was reasonable and in accordance with the listed evaluation criteria. CTA, Inc., B-244475.2, Oct. 23, 1991, 91-2 CPD ¶ 360. We find the evaluation here to be reasonable and consistent with the solicitation criteria.

The evaluation plan indicates that of 30 points available in the area of personnel experience, training, project management, and organization structure, points would be awarded as follows: 0 to 10 points, where key personnel had "minimum experience in 3270 terminals and controller maintenance"; 11 to 19 points for "substantial experience with the maintenance of [Comterm] terminals and controllers"; and 20 to 30 points for "extensive experience with the provision of maintenance support for [Comterm] terminals and controllers." The record shows that the agency currently relies upon some 1,200 3270-type terminal devices manufactured by Comterm in 1983, to provide on-line access to the agency's automated bibliographic databases. This equipment was state-of-the-art in 1983, but currently available commercial software has rendered it obsolescent. Until the agency can purchase new equipment and software, however, it is highly vulnerable to any disruption in service, since any failure in service impacts user operations by which the agency maintains its catalog. The agency has experienced an average of 154 service calls per month, so that any extensive disruption in service, including delays while contractor personnel undergo training, would create an unacceptable backlog.

The evaluators noted that the initial proposal did not address 3270 experience and advised the contracting officer that if the protester would present some evidence that it employed personnel with 3270 experience, or that FMS had maintained similar systems in the past, the protester might significantly improve its technical score. In its initial

BAFO responding to the agency's identification of deficiencies and weaknesses in its proposal, on July 13, the protester presented no evidence of experience with the 3270 devices, offering only to train its repair personnel within 30 days of award. In subsequent discussions, the agency advised the protester that it did not consider the proposal acceptable under three factors, including factors 1 and 3, personnel experience and maintenance of similar systems, where the chief deficiency was the protester's "[l]ack of staff with experience on 3270 hardware and software maintenance experience. . . . Training alone . . . is not sufficient."

The site visit found no evidence of a spare parts inventory for 3270 hardware; based on conversations with FMS staff, the evaluators advised the contracting officer that in their opinion, FMS lacked sufficient understanding of 3270 equipment and protocol to perform the maintenance satisfactorily. The agency again advised the protester of the deficiencies in its 3270 experience under factors 1 and 3 by letter dated September 17, providing the protester with another chance to propose personnel experienced with 3270 devices. The protester responded by proposing to offer employment to incumbent personnel, if it received award; it also provided resumes of additional personnel, whom it might hire if it received award. Despite its general promise to "utilize two technicians who have extensive 3270 experience and are experienced in the repair and maintenance of terminals operating on 3270 protocols," the protester did not employ and had no arrangements to employ any individual with 3270 experience, beyond offering a right of first refusal to the incumbent's employees.

In other words, regardless of whether, as the protester argues, the agency unduly emphasized experience with Comterm equipment when general 3270 experience was enough, the record shows that the protester neither had 3270 experience, nor committed itself to hiring personnel with 3270 experience. The resumes submitted with the BAFO, for persons whom the protester apparently would hire if it were unable to hire incumbent personnel, show meager 3270 experience where they show any such experience. The agency thus had a reasonable concern over the protester's lack of experience with 3270 protocol.

With regard to the protester's challenge to the need for 3270 experience instead of experience with terminals and controllers in general, the agency reasonably concluded that some experience with 3270 devices is necessary to ensure operation of the devices, which are critical to agency operations for the near future. The devices using the

3270 protocol, as used for communication with large mainframe computers, are of a different type and level of complexity from the devices for which experience is documented in the protester's proposal. The protester itself acknowledges that a 3270 terminal has a "special chip that is activated by a switch or the software" to indicate its location to the controller. As a result, the protester states, a technician would need "a brief orientation to those features and an understanding of how the mainframe communicates through the controller in order to be proficient in repairing 3270 terminals." Based upon our review of the record, the agency's concern that the protester's limited experience with the 3270 devices simply presented too great a risk of failure appears reasonable and consistent with the solicitation.

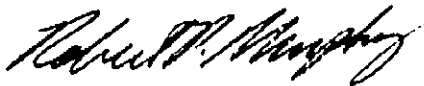
To the extent that the protester contends that the emphasis on Comterm 3270 experience unduly inflated the technical score of the awardee, the protester is simply not an interested party to challenge the scoring of the awardee's proposal, since there is another, technically acceptable proposal in line for award should we sustain the protest on this issue. 4 C.F.R. § 21.0(a) (1992). Further, the protester failed to raise any issue related to the evaluation of the awardee's proposal in a timely manner, since it first raised the issue related to evaluation of Comterm 3270 experience in its January 6 comments, submitted more than 10 days after it received the agency report, on December 15. See 4 C.F.R. § 21.2(a) (2).

The protester asserts that the agency unreasonably found its proposal unacceptable under factor 2, local support and spare parts supply logistics. Since the protester submitted a proposal that was unacceptable under factor 1, personnel experience, training, project management and organization structure, and factor 3, maintenance of similar systems, there is no need to address the question of whether the agency properly found the proposal unacceptable in other areas. Environmental Techs. Group, Inc., 69 Comp. Gen. 193 (1990), 90-1 CPD ¶ 101.

The protester contends that the agency failed to alert it to the deficiencies in its proposal and deprived FMS of the opportunity for meaningful discussions. The initial discussions were oral, and the record shows that the agency did have concerns whether these discussions properly alerted the offerors to the deficiencies and weaknesses in their proposals. For this reason, the agency reopened discussions. By letter dated August 18, the agency identified the precise deficiencies with the protester's proposal--lack of staff with experience either with 3270 hardware or software

maintenance, and with Comterm equipment particularly, and concerns over indications that the protester planned to ship defective parts to its depot instead of performing repairs on site. The agency reiterated this advice in its letter of September 17, requesting BAFOs. The record is therefore clear that the agency pointed out the protester's deficiencies and extended to FMS the opportunity to correct those deficiencies, which is the essence of meaningful discussions. Metropolitan Fed. Network, B-232096, Nov. 21, 1988, 88-2 CPD ¶ 495.

The protest is denied.


for James F. Hinchman
General Counsel